



City of Austin

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Opinion Committee

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Honorable Dan Morales
Texas Attorney General
Open Records Opinion Committee
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548

RE: Austin American-Statesman Open Records Request Dated
March 29, 1991

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Dear General Morales:

Pursuant to Section 7(a) of the Texas Open Records Act, Article 6252-17a, V.T.C.S. (hereinafter the "Act"), the City of Austin hereby requests a determination concerning whether the enclosed request for information, attached as Exhibit "A," falls within the exemptions contained in Sections 3(a)(1), 3(a)(3), or 3(a)(11) of the Act.

The requester seeks:

"Reports or files of completed internal affairs investigations involving use of force during 1990 and 1991, including, but not limited to, complainant statements, witness statements, statements from police officers in question, other affidavits included in the files; photographs of complainants' injuries, name of investigating officer of each case, the name of officer in question and the final disposition."

A review has indicated that this request encompasses a total of 50 files (list attached as Exhibit "B"). Within the time constraints of the Act, it has been impossible to review the files in but the most cursory fashion. The arguments concerning the exceptions claimed herein are somewhat general because of the broad sweep of the request. We will forward a representative sample of those files to you as soon as possible.

Department of Law, Brown Building, 708 Colorado, P.O. Box 1088
Austin, Texas 78767-8828, Telephone 512/499-2268 Fax #499-2894

ACCOMPANIED BY ENCLOSURES —
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We have already provided the requester with copies of the complaints, the names of the officers, and the final dispositions in the nine cases where the allegations were sustained. We respectfully submit that the remainder of the material in those nine files, and all of the documents in the 41 files where the allegations were unfounded, exonerated, or not sustained, is exempted from disclosure.

All these files are maintained by the Police Department; they contain complaints about and information bearing upon individual officers' performance. The City of Austin respectfully submits that the files are part of these officers' personnel files. See Open Records Decision No. 55 (1974). Local Government Code, Section 143.089(g) prohibits the release of this information by the Department:

(g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file. (Emphasis added.)

Local Gov't Code Section 143.089.

Your office has previously construed this statute:

[I]nformation in a personnel file maintained by a fire or police department pursuant to subsection (g) of the act is excepted from disclosure under section 3(a)(1) of the Open Records Act if the information is reasonably related to the fire fighter's or police officer's employment relationship with the fire or police department.

See Open Records Decision No. 562, page 8.

We also believe that this information is excepted from disclosure under Section 3(a)(1) under the doctrine of "false light" privacy. The fact that 41 of these 50 complaints have been classified as unfounded, exonerated or not sustained, indicate the Austin Police

Department harbors serious doubts about the truth of the information contained therein. The indiscriminate public disclosure of such information would be highly offensive to the reasonable police officer. This public disclosure would encourage the filing of frivolous complaints by indiscriminate complainants. The unbridled release of allegations of improper police activity that are, after investigation, considered untrue serves no public interest and is, in fact, destructive of the public interest and confidence in its police department.

The cases marked with asterisks are now in litigation and exemption is claimed from public disclosure under the provision of Section 3(a)(3). The criminal charges being presented in State v. Cates, No. 339-434, County Court at Law No. 6, Travis County, are based upon the same allegations which are the subject of the Internal Affairs investigation. Release of the files could adversely affect the prosecution of this case. The City of Austin has been sued in Martinez v. City of Austin, No. 493,373, District Court of Travis County, following the death which is the subject of the case with two asterisks. This case is also the subject of a separate request for ruling by the Attorney General, and exemption is still claimed. ✓

With respect to the statements of police officers and other City employees to the Chief of Police or to the Internal Affairs investigator providing information or assessment, advice, or opinion concerning each investigation, we believe that Section 3(a)(11) permits withholding of the statements.


The purpose of Section 3(a)(11) is to protect from public disclosure advice and opinions on policy matters, and to encourage frank and open discussion within the agency in connection with its decision making processes. Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App.--San Antonio-1982, writ ref'd n.r.e.). Also see Open Records Decisions Nos. 538 (1990); 222 (1979). The test under the subsection is whether interagency or intra-agency information consists of advice, opinion or recommendation that is used in the deliberative process.

The City also requests, pursuant to Section 7(c), a determination by the Attorney General concerning whether the complainants' privacy or property interests require withholding all or part of the material.

Honorable Dan Morales, Texas Attorney General
April 5, 1991
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If you have any questions on this request, please contact
Assistant City Attorney Robert P. Rose at (512) 480-5047.

Sincerely,


Diana L. Granger
Deputy City Attorney

DLG/SH/ln

Enclosures

cc: Iris J. Jones, City Attorney
Robert P. Rose, Assistant City Attorney
Kerry Haglund, Austin American-Statesman (without enclosures)
Chief Jim Everett, Austin Police Department
Lt. Roger Napier, Austin Police Department